The City of New York

POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings	:	
- against -	:	FINAL
Police Officer Vivens Julmis	:	ORDER
Tax Registry No. 947116	:	OF
Housing Police Service Area 4/ Viper 6	:	DISMISSAL

Police Officer Vivens Julmis, Tax Registry No. 947116, Shield No. 21975, Social Security No. ending in [redacted], having been served with written notice, has been tried on written Charges and Specifications numbered 2010-2057, as set forth on form P.D. 468 121, dated July 28, 2010, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Vivens Julmis from the Police Service of the City of New York.

RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: On July 8, 2013 @0001Hrs.

The City of New York

POLICE DEPARTMENT

June 19, 2013

In the Matter of the Charges and Specifications	:	Case No. 2010-2057
- against -	:	
Police Officer Vivens Julmis	:	
Tax Registry No. 947116	:	
Housing Police Service Area 4/ Viper 6	:	

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department: Beth Douglas, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Philip J. Smallman, Esq.
Attorney at Law
32 Court Street, Suite 1702
Brooklyn, New York 11201

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before the Court on February 19 and March 4, 2013, charged with the following:

1. Said Police Officer Vivens Julmis, assigned to the 75th Precinct, while off-duty, on or about July 21, 2010, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer engaged in a physical altercation with another individual. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

2. Said Police Officer Vivens Julmis, assigned to the 75th Precinct, while off-duty, on or about July 21, 2010, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer intentionally placed or attempted to place another person in reasonable fear of physical injury by displaying what appeared to be a firearm. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
NYS PENAL LAW SECTION 120.14 (1) MENACING IN THE SECOND DEGREE

3. Said Police Officer Vivens Julmis, assigned to the 75th Precinct, while off-duty, on or about March 5, 2012 in Kings County, after being served with an Order of Protection, did fail to immediately notify his Commanding Officer/Supervisory Head that he was served with said order. *(As amended)*

P.G. 208-37, Page 4, Additional Data, Paragraph 2 – FAMILY OFFENSES AND DOMESTIC VIOLENCE INVOLVING UNIFORMED OR CIVILIAN MEMBERS OF THE SERVICE

The Department was represented by Beth Douglas, Esq., Department Advocate's Office. Respondent was represented by Philip J. Smallman, Esq.

Respondent, through counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called [redacted] Pierre and [redacted] Pierre as witnesses.

[redacted] Pierre

[redacted] Pierre met Respondent through a dating website and became his girlfriend in September 2009. She knew him as "Vinny." On July 21, 2010, at approximately 2300 hours, Respondent called [redacted] and asked her to meet him at her home in East New York, Brooklyn. [redacted] met Respondent outside the home. [redacted] and Respondent drove in his car to a nearby sanitation area, near [redacted] Avenue. [redacted]e and Respondent often would go there to talk.

At approximately midnight, Respondent parked his car with Respondent sitting in the driver seat and [redacted] in the front passenger seat. The area was empty of other vehicles, pedestrians, and buildings other than a sanitation building.

Respondent asked [redacted] repeatedly about [redacted]'s ex-boyfriend. [redacted] responded that she was "done" with her ex-boyfriend because she was 22 years old and they had no ties to each other like children in common. [redacted] told Respondent, "Just leave me alone."

[redacted] testified that Respondent pulled out his firearm, which was silver with a black handle, from his left hip using his left hand. Respondent held the gun pointing up toward the car's roof while threatening, "[S]o help me God, I will shoot you and me tonight if you don't tell me . . . what's going on between you and your ex." [redacted] answered again that nothing was going on.

Respondent said that he had to "let my gun cool off." [redacted] heard the gun make a clicking sound. Respondent separated the gun into two pieces: he removed the "case" that held

the bullets, holding that in his right hand, and the gun in his left hand. Respondent placed the separated gun on the floor underneath the steering wheel.

Respondent asked [redacted] again about her ex-boyfriend and hit her on the upper part of the left side of her head. He used his closed right hand. This blow "slightly hurt" and dazed [redacted]. One more time, Respondent asked [redacted] about her ex-boyfriend. [redacted] had the same answer. [redacted] sat up and Respondent struck her left eye using his closed left hand. This time, the blow's severe force which [redacted] described as "like over a 10," i.e., on the 1 to 10 pain scale caused her to fall forward and put her face between her legs. The blow blurred the vision in her right eye and created an eclipse-like effect in her left eye, a black center surrounded by a ring of light.

Respondent grabbed [redacted], holding her neck, and proclaimed his love for her. [redacted] signaled to her mouth, spitting blood into a cup that Respondent gave to her. [redacted] screamed that she wanted to go home, but Respondent said that he would take her instead to his apartment. [redacted] screamed again, but Respondent refused.

[redacted] stopped screaming and Respondent drove to his apartment, where they stayed for about an hour. He told her he would take care of her and gave her something to eat in his bedroom. He fell asleep, but she told him she wanted to go home. Respondent "had like an attitude" but got dressed. Before they left, [redacted] noticed that Respondent's grandmother, with whom Respondent lived, was also there and "raised her head up."

On the way to [redacted]'s apartment, Respondent drove to an ambulance, which he knew was usually present at a certain location. Respondent left his car, spoke to a technician, and got an ice pack and ibuprofen for [redacted]. Respondent assured [redacted] that he was there for her and

would "fix what [he] did." Respondent dropped her off at approximately 0500 hours and [redacted] went to sleep.

In the morning, [redacted]'s mother, Allyson [redacted], noticed that Shadae was "moving a little funny" and [redacted]'s eye was swollen and black and blue. Allyson insisted [redacted] call Respondent because he was the last person she saw with [redacted]. [redacted] called Respondent and he came over. Allyson asked, "Vinny, look at her face, look at her face. What's going on?" Respondent looked at [redacted], saying, "[O]h, poor baby. What happened to your face?" Allyson told Respondent to take [redacted] to the hospital. [redacted] did not tell Allyson what had happened the night before.

Respondent took [redacted] to Brookdale Hospital and told [redacted] not to tell anyone because no one would believe her. [redacted] went to the emergency room alone. [redacted] originally told the medical staff that she "hit my face underneath the salt water." The doctor did not believe her and told her to tell the truth. She did. A CAT scan was performed and revealed that she had an orbital fracture. [redacted] left the hospital and went back home. [redacted] told Allyson about her medical diagnosis and the treatment, including that she would need surgery. [redacted] told Allyson that she injured her eye by falling into saltwater.

On July 23, 2010, [redacted] overheard Allyson ask Respondent in the kitchen about what happened. Respondent asked to speak with Allyson in the bedroom but they remained in the kitchen. Allyson called the police, who responded to the home, and [redacted] filled out a domestic incident report (see Department's Exhibit [DX] 2, DIR, taken at 2205 hours on July 23, 2010). The police took three photographs to document [redacted]'s swollen and bruised face (see DX 3a, frontal view, DX 3b, side view, DX 3c, angle view, all showing bloodied left eye and heavy bruising under skin beneath the eye).

On July 29, 2010, [redacted] returned to Brookdale Hospital for surgery on her left eye. The surgery repaired the eye's broken flooring and other bone issues involving her nose bridge and eyebrow. [redacted] received a mesh plate, which was still present at the time of trial, underneath her eye to hold the eye in place. Despite her treatment, [redacted] still suffered from blurry vision and pain in her left cheek when she got upset, required nasal spray to prevent sneezing, inability to drink out of a straw because the drink could enter her brain, and reduced mathematical ability (see DX 1, [redacted]'s medical records).

On cross examination, [redacted] testified that she was 23 years old at the time of the incident. She had a high school equivalency certificate and had worked at Burger King, though she was unemployed at the time of the incident.

[redacted] stated that her relationship with Respondent started in September 2009 and ended in July 2010. [redacted] conceded that Respondent was right handed; she learned this in a conversation with him. [redacted] testified that Respondent had struck her forehead before, in May 2010. She admitted that she did not tell anyone about that incident.

[redacted] knew that Respondent had two guns, a silver gun with a black handle and a black gun with a black handle. She saw both guns in December 2009 when they were in a car. She saw his service weapon because she lived in the precinct where he worked and she visited him when working. Whenever Respondent visited her, it was before or after his tour.

[redacted] acknowledged that when she was interviewed by investigators on August 31, 2010, she stated that a big white truck was parked in front of Respondent's car. Shadae testified that she did not see this as a sanitation truck. She did not know how long she and Respondent were parked.

[redacted] did not see Respondent pick his gun up from the floor, put the magazine clip back into the gun, or put his gun back on his left hip.

Respondent and [redacted] did not talk on the way to his apartment after the incident,. [redacted] did not talk to anyone once Respondent dropped her at home. She slept only for a couple of hours and went to the hospital in the afternoon. [redacted] remained in contact with Respondent that week.

Allyson [redacted]

Allyson [redacted] met Respondent when he began dating her daughter [redacted] in late September 2009. On July 21, 2010, Allyson was home when [redacted] received a phone call from Respondent. [redacted] told Allyson that she would meet Respondent downstairs. Allyson believed that she would return upstairs quickly because she was not dressed to go out. [redacted] left around 2300 hours, but did not return upstairs shortly after that.

Allyson thought [redacted]'s absence was strange, but Allyson could not reach her because [redacted] did not own a cell phone. Allyson did not see her return that night. The next day, Allyson woke up at 0600 hours and saw [redacted] on her bed facing the wall with a sheet wrapped around her head.

After 0800 hours, Allyson saw that [redacted]'s left eye was swollen shut and asked her about it. [redacted] at first did not answer, but then claimed that the injury occurred when she fell into sand or saltwater after going to the beach with Respondent. Allyson did not believe [redacted] and questioned her further, but she became silent.

[redacted] had a job interview that morning. Respondent called to speak to her but said he did not know anything about her eye.

Twenty minutes later, Respondent came to the apartment and spoke with Allyson while [redacted] was in a back bedroom. Respondent calmly told Allyson that he did not know what happened to [redacted]. Allyson called for [redacted] and Respondent calmly said, "[M]y God, [redacted], what happened to your eye?" [redacted] put her head down and said nothing. When Allyson confronted Respondent, he conceded that he met [redacted] the day before but left after a brief conversation. Allyson asked Respondent to take [redacted] to the emergency room.

Later that day, Allyson called Respondent, asking about [redacted]'s whereabouts and confronting him about [redacted]'s injury. Respondent denied Allyson's suspicions about him, saying that Shadae told him saltwater from the beach caused her injury. Respondent said that he did not challenge [redacted]'s explanation because he loved her. Respondent suggested that he would end the relationship if Allyson did not believe Respondent.

When [redacted] returned home later, [redacted] gave Allyson her medical paperwork. When Allyson saw that the records mentioned "orbit fracture blowout," she confronted [redacted] about what had happened. [redacted] became silent and did not answer.

On July 23, 2010, Allyson spoke to a domestic violence officer from her local command and explained her suspicions about Respondent. When, upon the officer's instructions, Allyson went to get [redacted] to go to the command, she found Respondent. Allyson confronted Respondent, who apologized for lying and saying "the reason why he did that to [redacted]'s eye is because of something she said." Allyson told [redacted] that Respondent's excuse was unacceptable and advised them to end their relationship. Respondent became depressed and said that he preferred suicide to losing [redacted]. Allyson, worried because Respondent had a gun, comforted him. Respondent compared himself to Allyson's son, saying Allyson would not

disown her son if he had acted like Respondent. Allyson continued to comfort him until he left and called the police approximately 15 minutes after Respondent left.

Two police officers came to Allyson's apartment and escorted Allyson and [redacted] to the command. Respondent was arrested later that evening.

Allyson spoke to members of the District Attorney's Office (DA) and was not in favor of a negotiated disposition and no incarceration for Respondent. It was Allyson that brought the matter to the authorities in the first place. She told the DA that "not only do I fear for my daughter's life, but my life, also." After the conversation, Allyson got an order of protection against Respondent (see DX 4, order of protection dated Mar. 5, 2012).

Since the incident, [redacted]'s mathematical ability and short-term memory had deteriorated. In addition, Allyson, [redacted] and the rest of her family moved after receiving a safety transfer through Safe Horizon.

On cross examination, Allyson explained that she received the order of protection because she was afraid generally and specifically based on her encounter with Respondent on July 23, 2010. Allyson only had one other incident with Respondent, when Respondent spoke to her through Respondent's father. Allyson never had received an order of protection before receiving the one against Respondent in 2012.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent met [redacted] through a dating website and was in a relationship with her for about a year.

On July 21, 2010, Respondent called [redacted] to meet him at her home when he got off work. After picking up [redacted], Respondent drove them for five minutes before parking the car on [redacted] Street (which intersects with Fountain Avenue) to resolve an argument. Respondent remained in the driver seat and [redacted] in the front passenger seat. The argument became heated. Respondent hit [redacted] one time. He admitted that he intended to hit her but denied intending to cause serious physical injury. After striking [redacted], Respondent apologized, talked with her, and drove her to his home. [redacted] voluntarily went with Respondent.

At Respondent's house, Respondent gave [redacted] some food, talked with her, and they both fell asleep. Respondent's aunt also was in the apartment. [redacted] woke Respondent to drive her home. Respondent did not think [redacted] needed any medical attention at that time.

A few hours later, [redacted] called him and asked him to come over. Respondent came over and took her to Brookdale Hospital.

Respondent had a good relationship with Allyson before the incident. Respondent did not tell Allyson what happened because he was trying to keep it between himself and [redacted].

Respondent was arrested and pleaded guilty to Assault in the Third Degree, a class A misdemeanor, on May 16, 2012. He was sentenced to a one year conditional discharge including a batterers intervention program, and a five-year final order of protection (see DX 5, plea and sentence transcript; DX 6, certificate of disposition).

On cross examination, Respondent stated that he was 5'9" tall and weighed 160 pounds on July 21, 2010. On that day, Respondent believed that Shadae was in contact with her ex-

boyfriend and argued with her about it. Sometime after 2300 hours, Respondent parked near a sanitation building. No pedestrians were nearby, although some cars drove by Respondent and [redacted]. Respondent had gone with [redacted] to this area many times before late at night.

Respondent had his gun, which was silver with a black handle, holstered on his belt near his right ribs that night. Respondent denied removing the gun. He did not threaten to shoot [redacted] and did not separate the gun.

Respondent admitted that he struck [redacted] in her left eye with his closed right hand, flinging it backward by "throw[ing his] hand up in the air." Respondent knew his blow was a "hard blow" but did not know if he had hit [redacted] in her eye. [redacted] put her head down between her legs, began crying and said, "You hit me." Respondent did not think that [redacted] was bleeding.

Respondent admitted that [redacted] asked Respondent to take her home. He told her, "[A]re you sure to go home? She said: Do you want to take me home or are you going home? And I said: If I'm driving, I'll go home. She said: Okay, we'll go home." [redacted] thus went with Respondent to his home. [redacted] did not cry on the drive. Respondent's aunt, who [redacted] thought was his grandmother, was asleep on the living room couch. Respondent took [redacted] straight to his bedroom and brought her food. Respondent did not see a visible injury to [redacted]'s left eye.

On July 22, 2010, Respondent took [redacted] to her home at around 0600 hours. [redacted]'s face looked a little swollen. Respondent did not take [redacted] to the hospital because she wanted to go home. Respondent did not call any member, delegate, commanding officer, or the Internal Affairs Bureau about the incident.

After 1000 hours, [redacted] called Respondent to take her to the hospital. Respondent arrived and spoke briefly with Allyson. He admitted lying to her about what caused [redacted]'s injury. At around 1100 hours, Respondent drove [redacted] to Brookdale Hospital. [redacted] entered the hospital alone and Respondent went to work, working from 1205 to 2023 hours. At around 1800 hours, Respondent spoke with [redacted].

On July 24, 2010, Respondent went to [redacted]'s home and spoke with [redacted], Allyson, and [redacted]'s older brother for approximately 15 minutes. Respondent admitted that he struck [redacted] and apologized for lying. Unlike the day when Respondent took [redacted] to the hospital, [redacted]'s face now was swollen as opposed to appearing red without swelling. Respondent was arrested.

Respondent was served with orders of protection. Up to March 5, 2012, these orders had applied to [redacted]. Respondent did not read his copy of the order prohibiting contact with Allyson on that date. Although aware of the requirement to notify the Department when served with an order of protection, Respondent did not notify his commanding officer about the order prohibiting contact with Allyson.

Respondent did not know if his father, who lived in Florida, called [redacted] on his behalf.

Upon questioning by the Court, Respondent testified that he owned two guns on the day of the incident and carried his off-duty weapon at the time of the incident. Respondent's off-duty gun was a Smith & Wesson; his service weapon was a Glock 9-millimeter.

FINDINGS AND ANALYSIS

Specification Nos. 1 & 2

The instant case involves an assault by Respondent upon his girlfriend, [redacted] Pierre. On July 21, 2010, they were in Respondent's vehicle in a desolate area of Brooklyn. Respondent, who was off duty, was upset about Shadae's communications with a former boyfriend. [redacted] asserted that she told Respondent she had done nothing improper, but he was still angry. She said that he removed a firearm from his left hip, saying that if she did not tell him what was going on with the ex-boyfriend, he would kill both her and himself with the gun. Then, saying he needed to let his gun "cool off," Respondent removed the magazine and placed it and the weapon itself on the floor of the vehicle.

Respondent then struck [redacted] on the left side of her head. He struck her a second time, using a closed fist, in the left eye. This punch caused serious and permanent damage to [redacted]. She required surgery to the orbital bone and a plate was placed in her eye.

Respondent did not dispute the fact that he assaulted [redacted]. In fact, he pleaded guilty in criminal court to Assault in the Third Degree. Therefore, he is found Guilty of Specification No. 1, engaging in a physical altercation with [redacted].

Respondent denied the facts in Specification No. 2, however, that he committed the crime of Menacing in the Second Degree in that he "intentionally placed or attempted to place" [redacted] "in reasonable fear of physical injury by displaying what appeared to be a firearm." He conceded that he had his off-duty Smith & Wesson firearm with him at the time of the incident but asserted that it remained holstered the entire time. He argued that although she accurately described the gun as gray metal in color with a black handle, she had the opportunity to view the gun innocently during the course of their relationship. He pointed out that she testified that he

removed the gun from his left hip, which should not have been the case because he was right handed and had his holster on his right hip. Finally, Respondent suggested that [redacted] fabricated the menacing allegation to gin up the case that he should be terminated from employment with the Department.

[redacted] testified in a straightforward manner and did not, for all that Respondent had inflicted upon her, even seem angry at him. Her supposed credibility problems, like not going to the hospital right away and not being forthright with the staff there, are consistent with the experience of domestic violence victims and, in any event, relatively meaningless in light of Respondent's admission that he did, in fact, strike her with devastating effect.

Moreover, [redacted] had many opportunities to embellish but did not. She maintained that when Respondent first hit her, it hurt "slightly." She testified that the hospital prescribed ibuprofen. In fact, she was prescribed not only that common drug but powerful painkillers like Percocet, Vicodin and Toradol, as well as several antibiotics (see, e.g., DX 1, medical records: Post-Operative Progress Sheet, July 30, 2010, 1730 hours; Medication Reconciliation; Medical Orders).

Respondent's right-handedness is not fatal to [redacted]'s claim that the gun was located on his left side. She did not say that he handled the gun with his left hand in any way that suggested a need to control it with the dominant hand. He did not point it at her, for example. Moreover, if [redacted] wanted to fabricate the menacing claim, she easily could have said that he simply removed the gun with his right hand and avoided the whole issue. In the end, this part of the case is not very material.

Nor was there a reason to make up the gun claim. The assault claim was much more serious and carried with it much more powerful proof. There was no suggestion at trial that

investigators asked [redacted] questions in a way that would have induced her to fabricate the claim, like, "Did he have his firearm? Did he point it at you? Guys like this have ways of getting out of cases so we need to know if he pointed it at you."

Finally, [redacted]'s denial that her testimony was coached is supported by the fact that she used lay terminology throughout her testimony, like "bullets" and "case," not ammunition and magazine. Her testimony did not seem coached at all.

Accordingly, the Court credits [redacted]'s claim that Respondent removed his weapon while inside the vehicle. Under the circumstances, in which Respondent threatened to shoot both her and him with the gun, this may be construed as intentionally placing, or attempting to place, [redacted] in reasonable fear of physical injury. Cf. People v. Bryant, 13 A.D.3d 1170, 1171 (4th Dept. 2004) (intent can be inferred from act itself or defendant's conduct and surrounding circumstances, so there was legally sufficient evidence for jury to conclude that defendant intended to place victim in reasonable fear of physical injury by displaying, inter alia, a tire iron). As such, Respondent is found Guilty of Specification No. 2.

Specification No. 3

When Respondent was arraigned on the criminal charges in this case, a temporary order of protection (TOP) was entered against him in favor of [redacted]. Pursuant to Patrol Guide § 208-37, Respondent notified the Department of this fact. New TOPs would have been issued as the case progressed, sometimes upon each new court date. It was not disputed that Respondent would not be required to notify the Department of each new TOP concerning [redacted], as these TOPs related back to the original.

On March 5, 2012, however, a TOP was issued against Respondent in favor of Allyson [redacted], [redacted]s mother. Respondent originally was indicted on felony charges, probably Assault in the First Degree (see Penal Law § 120.10 [2], intentionally disfiguring another person seriously and permanently) or Assault in the Second Degree (see Penal Law § 120.05 [1], intentionally causing serious physical injury). After almost two years, however, there was no resolution to the criminal case. Any felony conviction would mean the automatic loss of Respondent's job, and he indicated at his Department trial that he never intended to cause serious physical injury to [redacted].

Allyson testified that she met with members of the DA's Office in the spring of 2012. The DA indicated that a non-incarceratory misdemeanor plea (see Penal Law § 120.00 [1], Assault in the Third Degree, intentionally causing physical injury) was being contemplated. Allyson expressed dismay, noting that it was she that pushed for the incident to be brought to light in the first place, and she was scared of Respondent. At a court date shortly thereafter, a new TOP, this one in favor of Allyson, was issued (see DX 4).

Respondent conceded that he was in court when Allyson's TOP was issued, but asserted that because he had been issued TOPs in the case before, he did not examine the document and did not see that it listed Allyson, not [redacted]. Thus he did not know that a new Patrol Guide § 208 37 requirement had been triggered.

The Court disagrees. It was Respondent's responsibility to read carefully the document he was handed. Cf. *Case No. 2010-2489*, p. 18 (Mar. 4, 2013) (it was officer's responsibility, if he thought he was not on the tactical plan for a search warrant execution, to ascertain where he was supposed to be assigned); *Case No. 80354/04* (Apr. 4, 2005) (inter alia, officer failed to review a search warrant application with factual errors). Respondent's understanding of what

was to take place did not relieve him of that responsibility. *Cf. Case No. 83495/07*, pp. 12-13 (Jan. 27, 2010) (because officer was present in open court when family court judge verbally ordered both parties to stay away from each other, tribunal rejected claim that officer did not know she was to receive an actual piece of paper; the oral order activated the Patrol Guide provision). Accordingly, the Court finds Respondent Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 8, 2008. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of a serious and life-changing attack on his former girlfriend, [redacted] Pierre. The Department has recommended that Respondent be terminated from employment. Respondent has argued for a penalty short of termination.

It is surely true that most physical altercation cases do not result in termination. The instant case stands out, however, in its brutality and force. Respondent did not simply engage in a physical altercation with [redacted]. It undisputedly was a felony-level assault. Moreover, although Respondent claimed that he did not intend to cause serious physical injury, and merely struck [redacted] with a backward punch as his arm was at a right angle to his elbow, he hit [redacted]'s left eye with enormous force and with a closed fist. The punch shattered the orbital bone around her eye, causing what is known as an orbital blowout fracture (see DX 1, Diagnoses, dated July 29, 2010). Thus, the angle of the strike was not as important as its force.

[redacted] required invasive surgery to mend her injuries. Doctors had to put a mesh plate in the area to replace what was broken. Her life was changed by Respondent's assault: she could no longer do small things that everyone else takes for granted. She could not drink through a straw and had to take medication to prevent her from sneezing. This was all to prevent pressure in the area from affecting her brain.

Furthermore, Respondent showed no remorse when pleading guilty in criminal court (see DX 5, plea and sentence transcript) and this tribunal detected little to none at the Department trial. He was a uniformed member of the service for barely two years when he assaulted [redacted] thus demonstrating very early on "that he does not understand that along with the authority that is associated with being a police officer, there is also the responsibility to use that authority to protect, not endanger, the public which he has sworn to protect," see *Case No. 81365/05*, p. 48 (Nov. 6, 2006) (probationary officer terminated after hearing for confronting parking agents in effort to have summons voided).

In sum, "The most significant aggravating factors are the sheer brutality of the assault and the manner in which it erupted from a minor provocation. The injuries which Respondent caused to [redacted] are substantial and go well beyond the bruising, cuts and scratches which are found in most of the cases where officers have been allowed to remain on the job." See *Case No. 2009-0057*, p. 12 (June 4, 2012) (termination for off-duty road rage incident, where officer picked up individual, turned him upside down and dropped him, causing him serious head injury; officer left him laying in the middle of the street and did not call for ambulance). Respondent should not be entrusted with the awesome responsibility that comes with possession of police authority and a firearm.

Therefore, the Court recommends that Respondent be *DISMISSED* from employment with the Department. See *2009-0057*; *Case No. 72895/98*, pp. 22-23 (Aug. 10, 2000) (totally gratuitous off-duty assault over place on line at Department of Motor Vehicles; it was a savage beating for which officer had no insight or remorse); *Case Nos. 68582 & 68696/94* (Feb. 4, 1997) (similar attack: when officer followed individual into convenience store after officer thought he had stolen money from the bar where officer had left it for payment, officer struck him in head and slammed body onto counter numerous times, and kicked him in the ribs).

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED
JUL 08 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER VIVENS JULMIS
TAX REGISTRY NO. 947116
DISCIPLINARY CASE NO. 2010 2057

In 2010 and 2012, Respondent received an overall rating of 3.0 "Competent" on his annual performance evaluation. He was rated 3.5 "Highly Competent/Competent" in 2011. [redacted] He has no prior formal disciplinary record.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials